

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Marisol Villalobos Mercado,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-20-00423-PHX-DJH

**ORDER**

15 Plaintiff Marisol Villalobos Mercado (“Plaintiff”) filed a Motion for an Award of  
16 Attorney Fees under 42 U.S.C. § 406(b) (Doc. 33), seeking an award of \$23,386.50.  
17 Plaintiff’s Motion was backed by her Memorandum in Support. (*See* Doc. 34). The Social  
18 Security Administration (“SSA”) Commissioner (the “Commissioner”) filed a Response  
19 (Doc. 36) neither supporting nor opposing the award sought.

20 **I. Background**

21 Plaintiff filed Applications for Disability Insurance benefits and Supplemental  
22 Security Income benefits on May 12, 2016, for a period of disability beginning on May 7,  
23 2014. (R. at 19). Her claim was denied initially on August 5, 2016, and was then denied  
24 on reconsideration in December of 2016. (*Id.*) Following a subsequent hearing, the ALJ  
25 denied Plaintiff’s claims on January 25, 2019. (*Id.* at 19, 30). The Appeals Council denied  
26 Plaintiff’s review request and adopted the ALJ’s decision as its final decision, prompting  
27 Plaintiff to seek judicial review. (*Id.* at 1–3). On April 29, 2021, the Court reversed the  
28 ALJ’s decision and remanded the case for further proceedings. (*See* Doc. 24). Despite

1 Defendant's opposition (*see* Doc. 29), the Court also issued Plaintiff an award of  
 2 \$10,558.29 in attorney fees under the Equal Access to Justice Act ("EAJA"). (Doc. 31).

3 On remand, Plaintiff recovered past-due benefits in the amount of \$93,546.00.  
 4 (Doc. 34-1 at 6). A portion of these benefits were withheld in case Plaintiff's counsel  
 5 required payment. (*Id.*) Plaintiff's counsel now seeks \$23,386.50 in attorney fees.

## 6 **II. Legal Standard**

7 Section 406<sup>1</sup> establishes "the exclusive regime for obtaining fees for successful  
 8 representation of Social Security benefits claimants." *Gisbrecht v. Barnhart*, 535 U.S. 789,  
 9 795–96 (2002). Section 406(b) provides that "[w]henever a court renders a judgment  
 10 favorable to a claimant . . . who was represented before the court by an attorney, the court  
 11 may determine and allow as part of its judgment a reasonable fee for such representation,  
 12 not in excess of 25 percent of the total of the past-due benefits to which the claimant is  
 13 entitled by reason of such judgment . . . ." 42 U.S.C. § 406(b)(1)(A). Fees are payable out  
 14 of, and not in addition to, the amount of the past-due benefits. *Id.* Before awarding fees,  
 15 the Court must consider whether the 42 U.S.C. § 406(b) fee requested is (1) within the  
 16 statutory guidelines; (2) consistent with the fee agreement; and (3) reasonable in light of  
 17 the contingent-fee agreement. *Gisbrecht*, 535 U.S. at 807–08.

## 18 **III. Discussion**

19 Plaintiff's counsel is seeking \$23,386.50 in § 496(b) fees. (Doc. 34 at 1). Upon  
 20 review of the Itemization of Services (Doc. 34-3), the time expended and the amounts  
 21 charged by Plaintiff's counsel are reasonable in this case. First, the fees sought adhere to  
 22 § 406(b)'s guidelines. Plaintiff was awarded \$93,546.00 in back past-due benefits, and the  
 23 requested \$23,386.50 in attorney fees equals 25% of the award. Second, this amount is  
 24 consistent with the fee agreement which clearly states that Plaintiff's attorney would be  
 25 entitled to 25% of past-due benefits. (Doc. 34-2 at 2). Lastly, the requested fee is  
 26 reasonable given the contingent-fee agreement because it reflects the nature of the  
 27 recovery. (Doc. 34 at 5). Plaintiff's case had a substantial risk of loss because Plaintiff  
 28

---

<sup>1</sup> Unless where otherwise noted, all Section references are to the Social Security Act.

1 had been repeatedly denied on agency review before the initiating this civil action. (*Id.*).  
 2 In sum, the Court finds that the amount requested is reasonable under *Gisbrecht* and will  
 3 award Plaintiff \$23,386.50 in § 406(b) fees.


4 Under the present circumstances, however, an offset is necessary. The Court  
 5 granted Plaintiff's Motion for Attorney Fees under the EAJA and awarded fees in the  
 6 amount of \$10,558.29. (Docs. 26, 31 (\$819.28 was deducted from the original amount  
 7 requested by Plaintiff based on Defendant's Response.)). When an attorney receives an  
 8 award under § 406(b) and the EAJA, the attorney must refund to the client the smaller of  
 9 the awards. *See Parrish v. Comm'r of Soc. Sec. Admin.*, 698 F.3d 1215, 1221 (9th Cir.  
 10 2012) (holding "[w]here the same attorney represented a claimant at each stage of judicial  
 11 review, the court need merely offset all EAJA awards against the § 406(b) award"). Given  
 12 the \$23,386.50 award of § 406(b) fees to Plaintiff's counsel, the fees awarded under the  
 13 EAJA here shall be refunded to Plaintiff.

14 Accordingly,

15 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Attorney Fees (Doc. 33) is  
 16 granted under 42 U.S.C. § 406(b). Plaintiff's counsel Mark Caldwell is awarded  
 17 \$23,386.50 in attorney fees to be paid out of the sum from Plaintiff's past-due benefits.  
 18 Payment is deliverable to counsel's office: Mark Caldwell, PC, 8205 S. Priest Dr., PO Box  
 19 10446, Tempe, AZ 85284.

20 **IT IS FURTHER ORDERED** that Plaintiff's counsel shall refund to Plaintiff the  
 21 lesser of the fees awarded under 42 U.S.C. § 406(b) and the Equal Access to Justice Act.

22 Dated this 7th day of November, 2025.

23  
 24  
 25   
 26 Honorable Diane J. Humetewa  
 27 United States District Judge  
 28